Hon'ble the High Court of Uttaranchal at Nainital
Criminal Misc. Application No. 164 of 2003

Court No.6
Date: 8th October, 2003

1. Gurnam Singh S/o Sri Shyam Singh
   R/o Kesar Nagar P.S. Jagdari
   District Yamuna Nagar (Haryana)
2. S.S. Finance & Leasing Company through
   its Manager, Sri Pramood Chand S/o Raghunath
   R/o 177 Model Town near Melasingh Chawk
   Yamuna Nagar – Haryana ------Applicants

Vs.

1. State of Uttaranchal
2. Forest Department Uttaranchal -----Opposite Parties

Hon'ble Rajesh Tandon J.

Heard Sri K.S. Verma, learned counsel for the applicant and A.G.A. for the State. By the present petition u/s 482 Cr.P.C. petitioners have challenged the order dated 15th February, 2003 passed by the District and Sessions Judge, Haridwar by which Criminal Revision No. 208/02 has been dismissed. The petitioners have prayed for the release of truck no. HR-02A/4721 in favour of the applicant no.2.

Briefly stated Sri Ramesh Chandra, Forest Guard of Forest Department Uttaranchal who was posted in Bhojpur Forest Area in District Haridwar on 30.11.2000 has made a search of truck no. HR-02A/4721. In pursuance of the search the applicant no. 1 was arrested with Khair wood. He lodged a first information report (FIR) at P.S. Laksar district Haridwar. On the basis of FIR dated 30.11.2000 a case Under Section 26/41/42/77 of the Forest Act Under Section 9/51 of the Wild Life Protection Act was registered against the applicant no. 1, namely, Sri Gurnam Singh at P.S. Laksar district Haridwar.

According to the prosecution story at the time of the alleged incident when the applicant no. 1 was arrested, the above truck seized from the possession of the applicant no. 1 and the same was taken by the Forest Department in its possession and the same is at the present in the custody of the Forest Department.

Undisputedly the truck no. HR-02A/4721 was financed by the applicant no. 2 who is also claiming himself to be the real owner of the truck.

On 1st February, 2002 the Learned C.J.M. Sri K.D. Bhatt, Haridwar has rejected the application of the applicant no. 2, namely, M/s S.S. Finance & Leasing Company on the ground that the earlier application filed by Sri Gurnam Singh was rejected on 17th August, 2001 and as such the application filed by the respondent no.2 was rejected on 12.02.2002 by the C.J.M. Haridwar.

Aggrieved by the aforesaid order, the applicant no. 2 alone who is the financer has preferred a revision, the revision has been rejected with the following observations:-

'' निगरानी कर्ता केवल फाईनेंसर है मालिक नही है, इसलिए उपरोक्त तथ्यो को देखते हुये मेरे विचार से निगरानी बलहीन है और निरस्त होने योग्य है।''

As well appear from the two orders that the application of the applicant no. 1 has been rejected on 17.08.2001.

The government counsel has stated that since the order dated 17.08.2001 has already become final and, therefore, the present application is not maintainable. On the other hand counsel for the petitioners have stated that the application of the applicant No.1 was rejected and it was held that he was not entitled to file the application and as such applicant no.2 has filed the applicat9on was well as the revision. Revisional court has recorded a finding that financer company is not the owner of the vehicle in question and, therefore, it cannot be released in his favour.

Coming to the merits of the controversy, since the vehicle of the applicant no. 1 has been financed by the applicant no. 2, if both the parties agree sufficient security may be given by the applicant no. 1 and 2 both in accordance with the provisions of Section 451 of the Code of Criminal Procedure. Section 451 of the Code of Criminal Procedure reads as under:-

"Order of custody and disposal of property pending trial in certain Cases:- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for

the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to seedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence and it thinks necessary, order it to be sold or otherwise disposed of.

Explanation- For the purpose of this section “property” includes:-

a) property of “any kind” or document which is produced before the Court or which is in its custody.

b) Any property regarding which an offence appears to have been committed or which appears to have been for the commission of any offence.”

According to the petitioners, in the present case since the question is about the interim custody of the vehicle during inquiry or trial and the vehicle is lying with the Forest Department who has seized the vehicle along with applicant no. 1, no useful purpose will be served by detaining the vehicle as the condition of the vehicle is deteriorating day by day.

The counsel for the petitioners have referred the judgment reported in judgment of the Apex court reported in 2003 ACC. The Apex court after relying upon the judgment of 1977 volume 14 ACC 220 (SC) has held as under:-

“The question of proper custody of the seized article is raised in number of matters. In Smt. Basavva Kom Dyamangouda til Vs. State of Mysore and another, this court dealt with a case where the seized articles were not available for being returned to the complainant. In that, case the recovered ornaments were kept in a truck in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:-

> “The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant,

the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at ever stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

The court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

To avoid such a situation, in our view, powers under section 451 Cr.P.C. should be exercised promptly and at the earliest.

Learned senior counsel Mr. Dhirlakia, appearing for the State of Gujrat further submitted that at present in the police station premises, number of vehicles are kept unattended and

vehicles become junk day by day. It is his contention the appropriate directions should be given by the Magistrates who are dealing with suitable questions to hand over such vehicles to the owner or to the person from whom the vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

In our view, whatever be the situation, it is of no use to keep seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

So far as the question with regard to the title of the vehicles is concerned, since the application filed by the applicant no. 1 had already been rejected and application filed by the applicant no. 2 has been rejected on the ground that he is not the owner, the Magistrate concerned has to decide the question as to whether the financier is the owner or the real ownership belong to the applicant no. 1. The Magistrate concerned shall take evidence in this regard and after taking into evidence regarding the ownership of the vehicle sufficient security may be taken in terms of Section 451 from both the applicants no.1 and 2.

Any dispute between the financer and the owner is not subject matter of the dispute. Such a dispute is amendable to Civil Court in view of 1979 (4) S.C.C. Page 396, Sardar Trilok Singh & Others Vs. Satya Deo Tripathi.

"The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financer on the basis of some terms settled between the parties.

Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1073 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay

the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck."

It has been held in **1999 Cri.L.J. 2746, in Bhopal Singh Vs. State and another** where the Rajasthan High Court has held that the Magistrate concerned shall consider as to who is the best person entitled to the interim custody of the tractor. It reads as under:-

"The question to be considered by the Magistrate was as to who is the best person entitled to the interim custody of the tractor."

In **2001 AAR (SC) Ashok Kumar Vs. State of Bihar & Others** the Apex Court has made following order:-

"We do not think it necessary to keep the vehicle in the compound of the Court indefinitely for a very long time till the final disposal of this case. It is more advisable to entrust it to the registered owner on behalf of the Court under certain conditions. We, therefore, direct the court in whose custody the vehicle is presently kept to release the same to the appellant on the following conditions:-

1. He shall execute a bond in a sum of Rs. 1,00,000/- (Rupees One Lakh) with two solvent sureties to the satisfaction of the Chief Judicial Magistate, Muzaffar-pur.
2. He must satisfy the Court that he is the registered owner of the vehicle.
3. He shall not allow his son Deepak Singh to use the vehicle until disposal of the prosecution case against him. He shall file an undertaking in court to that effect.
4. He shall produce the vehicle either before the court or before such other authorities as the Court may direct.
5. He will not transfer the vehicle to anybody else nor possession of the same be parted with until disposal of the case.

The appeal is disposed of accordingly."

The court shall also kept in mind that the interim arrangement is only temporary and the main object is to protect or preserve the property pending trial. Both the petitioners are, therefore, directed to file an appropriate application before the Chief Judicial Magistrate u/s 451 Cr.P.C. for the released of the vehicle. The Proceeding Officer shall consider the application

independently and will not be guided by the observations keeping in view the nature of offence committed by the petitioners.

Consequently, if such an application for release of the vehicle in question is filed by the petitioners, the same shall be disposed of in accordance with law within a month from the date of filing of the certified copy of the order.

With the aforesaid directions the application u/s 482 Cr.P.C. is disposed of.

(Rajesh Tandon J.)

08.10.2003

ASWAL